

Article 7.

Coastal Area Management.

Part 1. Organization and Goals.

**§ 113A-100. Short title.**

This Article shall be known as the Coastal Area Management Act of 1974. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

**§ 113A-101. Cooperative State-local program.**

This Article establishes a cooperative program of coastal area management between local and State governments. Local government shall have the initiative for planning. State government shall establish areas of environmental concern. With regard to planning, State government shall act primarily in a supportive standard-setting and review capacity, except where local governments do not elect to exercise their initiative. Enforcement shall be a concurrent State-local responsibility. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

**§ 113A-102. Legislative findings and goals.**

(a) Findings. – It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost ninety percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.

In recent years the coastal area has been subjected to increasing pressures which are the result of the often-conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States.

(b) Goals. – The goals of the coastal area management system to be created pursuant to this Article are as follows:

- (1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;

- (2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;
- (3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;
- (4) To establish policies, guidelines and standards for:
  - a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;
  - b. The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;
  - c. Recreation and tourist facilities and parklands;
  - d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
  - e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;
  - f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;
  - g. Any other purposes deemed necessary or appropriate to effectuate the policy of this Article. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

**§ 113A-103. Definitions.**

As used in this Article:

- (1) "Advisory Council" means the Coastal Resources Advisory Council created by G.S. 113A-105.
- (1a) "Boat" means a vessel or watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.
- (2) "Coastal area" means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the "coastal area," as defined by this section, and his designation shall be final and conclusive. On or before May 1, 1974, the Governor shall file copies of a list of said coastal-area counties with the chairmen of the

boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. By way of illustration, the counties designated as coastal-area counties under this subdivision as of July 1, 2012, are Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. The coastal-area counties and cities shall transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S. 113A-104(d).

- (3) "Coastal sound" means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. For purposes of this Article, the inland limits of a sound on a tributary river shall be defined as the limits of seawater encroachment on said tributary river under normal conditions. "Normal conditions" shall be understood to include regularly occurring conditions of low stream flow and high tide, but shall not include unusual conditions such as those associated with hurricane and other storm tides. Unless otherwise determined by the Commission, the limits of seawater encroachment shall be considered to be the confluence of a sound's tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic salt water under normal conditions. For purposes of this Article, the aforementioned points of confluence with tributary rivers shall include the following:

- a. On the Chowan River, its confluence with the Meherrin River;
- b. On the Roanoke River, its confluence with the northeast branch of the Cashie River;
- c. On the Tar River, its confluence with Tranters Creek;
- d. On the Neuse River, its confluence with Swift Creek;
- e. On the Trent River, its confluence with Ready Branch.

Provided, however, that no county shall be considered to be within the coastal area which: (i) is adjacent to, adjoining or bounded by any of the above points of confluence and lies entirely west of said point of confluence; or (ii) is not bounded by the Atlantic Ocean and lies entirely west of the westernmost of the above points of confluence.

- (4) "Commission" means the Coastal Resources Commission created by G.S. 113A-104.
- (4a) "Department" means the Department of Environmental Quality.
- (5) a. "Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling;

dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in G.S. 113A-113(b)(2) or (b)(5).

- b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:
1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing right-of-way, or for emergency repairs and safety enhancements of an existing road as described in an executive order issued under G.S. 166A-19.30(a)(5).
  2. Work by any railroad company or by any utility and other persons engaged in the distribution and transmission of petroleum products, water, telephone or telegraph messages, or electricity for the purpose of inspecting, repairing, maintaining, or upgrading any existing substations, sewers, mains, pipes, cables, utility tunnels, lines, towers, poles, tracks, and the like on any of its existing railroad or utility property or rights-of-way, or the extension of any of the above distribution-related facilities to serve development approved pursuant to G.S. 113A-121 or 113A-122;
  3. Work by any utility and other persons for the purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities (including environmental aspects of such siting), and work on facilities used directly in connection with the above facilities;
  4. The use of any land for the purposes of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products, including normal private road construction, raising livestock or poultry, or for other agricultural purposes except where excavation or filling affecting estuarine waters (as defined in G.S. 113-229) or navigable waters is involved;
  5. Maintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes.
  6. The construction of any accessory building customarily incident to an existing structure if the work does not involve filling, excavation, or the alteration of any sand dune or beach;

7. Completion of any development, not otherwise in violation of law, for which a valid building or zoning permit was issued prior to ratification of this Article and which development was initiated prior to the ratification of this Article;
  8. Completion of installation of any utilities or roads or related facilities not otherwise in violation of law, within a subdivision that was duly approved and recorded prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article;
  9. Construction or installation of any development, not otherwise in violation of law, for which an application for a building or zoning permit was pending prior to the ratification of this Article and for which a loan commitment (evidenced by a notarized document signed by both parties) had been made prior to the ratification of this Article; provided, said building or zoning application is granted by July 1, 1974;
  10. It is the intention of the General Assembly that if the provisions of any of the foregoing subparagraphs 1 to 10 of this paragraph are held invalid as a grant of an exclusive or separate emolument or privilege or as a denial of the equal protection of the laws, within the meaning of Article I, Secs. 19 and 32 of the North Carolina Constitution, the remainder of this Article shall be given effect without the invalid provision or provisions.
- c. The Commission shall define by rule (and may revise from time to time) certain classes of minor maintenance and improvements which shall be exempted from the permit requirements of this Article, in addition to the exclusions set forth in paragraph b of this subdivision. In developing such rules the Commission shall consider, with regard to the class or classes of units to be exempted:
1. The size of the improved or scope of the maintenance work;
  2. The location of the improvement or work in proximity to dunes, waters, marshlands, areas of high seismic activity, areas of unstable soils or geologic formations, and areas enumerated in G.S. 113A-113(b)(3); and
  3. Whether or not dredging or filling is involved in the maintenance or improvement.
- (5a) "Floating structure" means any structure, not a boat, supported by a means of floatation, designed to be used without a permanent foundation, which is used or intended for human habitation or commerce. A structure shall be considered a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location. A boat may be considered a floating structure when its means of propulsion has been removed or rendered inoperative.

- (6) "Key facilities" include the site location and the location of major improvement and major access features of key facilities, and mean:
  - a. Public facilities, as determined by the Commission, on nonfederal lands which tend to induce development and urbanization of more than local impact, including but not limited to:
    - 1. Any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;
    - 2. Major interchanges between the interstate highway system and frontage-access streets or highways; major interchanges between other limited-access highways and frontage-access streets or highways;
    - 3. Major frontage-access streets and highways, both of State concern; and
    - 4. Major recreational lands and facilities;
  - b. Major facilities on nonfederal lands for the development, generation, and transmission of energy.
- (7) "Lead regional organizations" means the regional planning agencies created by and representative of the local governments of a multi-county region, and designated as lead regional organizations by the Governor.
- (8) "Local government" means the governing body of any county or city which contains within its boundaries any lands or waters subject to this Article.
- (9) "Person" means any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or agency of the State or local government unit, or any other legal entity however designated.
- (10) Repealed by Session Laws 1987, c. 827, s. 133.
- (11) "Secretary" means the Secretary of Environmental Quality, except where otherwise specified in this Article. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 913, s. 1; c. 932, s. 2.1; 1987, c. 827, s. 133; 1989, c. 727, s. 126; 1991 (Reg. Sess., 1992), c. 839, ss. 1, 4; 1995, c. 509, s. 58; 1997-443, s. 11A.119(a); 2012-202, s. 1; 2014-100, s. 14.7(l); 2015-241, s. 14.30(u), (v).)

**§ 113A-104. Coastal Resources Commission.**

(a) Established. – The General Assembly hereby establishes within the Department of Environmental Quality a commission to be designated the Coastal Resources Commission.

(b) Repealed by Session Laws 2013-360, s. 14.24(a), effective July 1, 2013.

(b1) Composition. – The Coastal Resources Commission shall consist of 13 members as follows:

- (1) One appointed by the Governor who shall at the time of appointment be a coastal property owner or experienced in land development.

- (2) One appointed by the Governor who shall at the time of appointment be a coastal property owner or experienced in land development.
- (3) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in engineering in the coastal area or a marine-related science.
- (4) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in engineering in the coastal area or a marine-related science.
- (5) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in coastal-related business.
- (6) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in local government within the coastal area.
- (7) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in coastal agriculture.
- (8) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in commercial fishing.
- (9) One appointed by the Governor who shall at the time of appointment be actively connected with or have experience in coastal forestry.
- (10) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be actively connected with or have experience in sports fishing.
- (11) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall serve at large.
- (12) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be actively connected with or have experience in wildlife.
- (13) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall serve at large.

(c) Appointment of Members. – As used in this section, the term "appointing authority" means the Governor in the case of members appointed by the Governor and means the General Assembly in the case of members appointed by the General Assembly. Appointments to the Commission shall be made to provide knowledge and experience in a diverse range of coastal interests. The members of the Commission shall serve and act on the Commission solely for the best interests of the public and public trust, and shall bring their particular knowledge and experience to the Commission for that end alone. Counties and cities in the coastal area may designate and transmit to the appointing authorities no later than May 1 of each even-numbered year qualified persons in the categories set out in

subsection (b1) of this section corresponding to the Commission positions to be filled that year.

(c1) The members of the Commission whose qualifications are described in subdivisions (3), (6), (7), (8), (9), (11), and (12) of subsection (b1) of this section shall be persons who do not derive any significant portion of their income from land development, construction, real estate sales, or lobbying and do not otherwise serve as agents for development-related business activities.

(c2) All members of the Commission are covered persons for the purposes of Subchapter II of Chapter 163A of the General Statutes, the State Government Ethics Act. As covered persons, members of the Commission shall comply with the applicable requirements of the State Government Ethics Act, including mandatory training, the public disclosure of economic interests, and ethical standards for covered persons. Members of the Commission shall comply with the provisions of the State Government Ethics Act to avoid conflicts of interest. The Governor may require additional disclosure of potential conflicts of interest by the members described in subsection (c1) of this section. The Governor may promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons described in subsection (c1) of this section.

(d) Repealed by Session Laws 2013-360, s. 14.24(a), effective July 1, 2013.

(e) Repealed by Session Laws 2013-360, s. 14.24(a), effective July 1, 2013.

(f) Office May Be Held Concurrently with Others. – Membership on the Coastal Resources Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(g) Terms. – The members shall serve staggered terms of office of four years. At the expiration of each member's term, the appointing authority shall reappoint or replace the member with a new member of like qualification as specified in subsection (b1) of this section.

(h) Vacancies. – In the event of a vacancy arising otherwise than by expiration of term, the appointing authority shall appoint a successor of like qualification as specified in subsection (b1) of this section who shall then serve the remainder of his predecessor's term.

(i) Officers. – The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of the vice-chairman's regularly appointed term.

(j) Compensation. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(k) Repealed by Session Laws 2013-360, s. 14.24(a), effective July 1, 2013.

(l) Attendance. – Regular attendance at Commission meetings is a duty of each member. The Commission shall develop procedures for declaring any seat on the Commission to be vacant upon failure by a member to perform this duty.

(m) Quorum. – A majority of the Commission shall constitute a quorum. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; c. 486, ss. 1-6; 1981, c. 932, s. 2.1; 1989,

c. 505; c. 727, s. 218(64); 1997-443, s. 11A.119(a); 2013-360, s. 14.24(a); 2015-9, s. 1.3; 2015-241, s. 14.30(u); 2017-6, s. 3.)

**§ 113A-105. Coastal Resources Advisory Council.**

(a) Creation. – There is hereby created and established a council to be known as the Coastal Resources Advisory Council.

(b) Membership and Terms. – The Coastal Resources Advisory Council shall consist of not more than 20 members appointed or designated by the Coastal Resources Commission. Counties and cities in the coastal area may nominate candidates for consideration by the Commission. The terms of all Council members serving on the Council on January 1, 2013, shall expire on July 31, 2013. A new Council shall be appointed in the manner provided by this subsection with terms beginning on August 1, 2013, and expiring on June 30, 2015. Members may be reappointed at the discretion of the Commission, provided that one-half of the membership at the beginning of any two-year term are residents of counties in the coastal area.

(c) Functions and Duties. – The Advisory Council shall assist the Secretary and the Secretary of Administration in an advisory capacity:

- (1) On matters which may be submitted to it by either of them or by the Commission, including technical questions relating to the development of rules, and
- (2) On such other matters arising under this Article as the Council considers appropriate.

(d) Multiple Offices. – Membership on the Coastal Resources Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) Chairman and Vice-Chairman. – A chairman and vice-chairman shall be elected annually by the Council.

(f) Compensation. – The members of the Advisory Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 249, ss. 1, 2; 1989, c. 727, s. 127; c. 751, s. 8(14a); 1991 (Reg. Sess., 1992), c. 959, s. 26; 1995, c. 123, s. 4; c. 504, s. 7; 2013-360, s. 14.25.)

**Part 2. Planning Processes.**

**§ 113A-106. Scope of planning processes.**

Planning processes covered by this Article include the development and adoption of State guidelines for the coastal area and the development and adoption of a land-use plan for each county within the coastal area, which plans shall serve as criteria for the issuance or denial of development permits under Part 4. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8. (1997-400, s. 3.3.)

**§ 113A-107. State guidelines for the coastal area.**

(a) State guidelines for the coastal area shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3. Land and water areas addressed in the State guidelines may include underground areas and resources, and airspace above the land and water, as well as the surface of the land and surface waters. Such guidelines shall be used in the review of applications for permits issued pursuant to this Article and for review of and comment on proposed public, private and federal agency activities that are subject to review for consistency with State guidelines for the coastal area. Such comments shall be consistent with federal laws and regulations.

(b) The Commission shall be responsible for the preparation, adoption, and amendment of the State guidelines. In exercising this function it shall be furnished such staff assistance as it requires by the Secretary of Environmental Quality and the Secretary of the Department of Administration, together with such incidental assistance as may be requested of any other State department or agency.

(c) The Commission shall mail proposed as well as adopted rules establishing guidelines for the coastal area to all cities, counties, and lead regional organizations within the area and to all State, private, federal, regional, and local agencies the Commission considers to have special expertise on the coastal area. A person who receives a proposed rule may send written comments on the proposed rule to the Commission within 30 days after receiving the proposed rule. The Commission shall consider any comments received in determining whether to adopt the proposed rule.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 134.

(f) The Commission shall review its rules establishing guidelines for the coastal area at least every five years to determine whether changes in the rules are needed. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1975, 2nd Sess., c. 983, ss. 75, 76; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, s. 134; 1989, c. 313; c. 727, s. 218(65); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

**§ 113A-107.1. Sea-level policy.**

(a) The General Assembly does not intend to mandate the development of sea-level policy or the definition of rates of sea-level change for regulatory purposes.

(b) No rule, policy, or planning guideline that defines a rate of sea-level change for regulatory purposes shall be adopted except as provided by this section.

(c) Nothing in this section shall be construed to prohibit a county, municipality, or other local government entity from defining rates of sea-level change for regulatory purposes.

(d) All policies, rules, regulations, or any other product of the Commission or the Division related to rates of sea-level change shall be subject to the requirements of Chapter 150B of the General Statutes.

(e) The Commission shall be the only State agency authorized to define rates of sea-level change for regulatory purposes. If the Commission defines rates of sea-level change for regulatory purposes, it shall do so in conjunction with the Division of Coastal Management of the Department. The Commission and Division may collaborate with other State agencies, boards, and commissions; other public entities; and other institutions when defining rates of sea-level change. (2012-202, s. 2(a).)

**§ 113A-108. Effect of State guidelines.**

All local land-use plans adopted pursuant to this Article within the coastal area shall be consistent with the State guidelines. No permit shall be issued under Part 4 of this Article which is inconsistent with the State guidelines. Any State land policies governing the acquisition, use and disposition of land by State departments and agencies shall take account of and be consistent with the State guidelines adopted under this Article, insofar as lands within the coastal area are concerned. Any State land classification system which shall be promulgated shall take account of and be consistent with the State guidelines adopted under this Article, insofar as it applies to lands within the coastal area. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

**§ 113A-109:** Repealed by Session Laws 2017-10, s. 3.8, effective May 4, 2017.

**§ 113A-110. Land-use plans.**

(a) A land-use plan for a county shall, for the purpose of this Article, consist of statements of objectives, policies, and standards to be followed in public and private use of land within the county, which shall be supplemented by maps showing the appropriate location of particular types of land or water use and their relationships to each other and to public facilities and by specific criteria for particular types of land or water use in particular areas. The plan shall give special attention to the protection and appropriate development of areas of environmental concern designated under Part 3. The plan shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102 and with the State guidelines adopted by the Commission under G.S. 113A-107. The plan shall be adopted, and may be amended from time to time, in accordance with the procedures set forth in this section.

(b) The body charged with preparation and adoption of a county's land-use plan (whether the county government or the Commission) may delegate some or all of its responsibilities to the lead regional organization for the region of which the county is a part. Any such delegation shall become effective upon the acceptance thereof by the lead regional organization. Any county proposing a delegation to the lead regional organization shall give written notice thereof to the Commission at least two weeks prior to the date on which such action is to be taken. Any city or

county within the coastal area may also seek the assistance or advice of its lead regional organization in carrying out any planning activity under this Article.

(c) The body charged with preparation and adoption of a county's land-use plan (whether the county or the Commission or a unit delegated such responsibility) may either (i) delegate to a city within the county responsibility for preparing those portions of the land-use plan which affect land within the city's zoning jurisdiction or (ii) receive recommendations from the city concerning those portions of the land-use plan which affect land within the city's zoning jurisdiction, prior to finally adopting the plan or any amendments thereto or (iii) delegate responsibility to some cities and receive recommendations from other cities in the county. The body shall give written notice to the Commission of its election among these alternatives. On written application from a city to the Commission, the Commission shall require the body to delegate plan-making authority to that city for land within the city's zoning jurisdiction if the Commission finds that the city is currently enforcing its zoning ordinance, its subdivision regulations, and the State Building Code within such jurisdiction.

(d) The body charged with adoption of a land-use plan may either adopt it as a whole by a single resolution or adopt it in parts by successive resolutions; said parts may either correspond with major geographical sections or divisions of the county or with functional subdivisions of the subject matters of the plan. Amendments and extensions to the plan may be adopted in the same manner.

(e) Prior to adoption or subsequent amendment of any land-use plan, the body charged with its preparation and adoption (whether the county or the Commission or a unit delegated such responsibility) shall hold a public hearing at which public and private parties shall have the opportunity to present comments and recommendations. Notice of the hearing shall be given not less than 30 days before the date of the hearing and shall state the date, time, and place of the hearing; the subject of the hearing; the action which is proposed; and that copies of the proposed plan or amendment are available for public inspection at a designated office in the county courthouse during designated hours. Any such notice shall be published at least once in a newspaper of general circulation in the county.

(f) No land-use plan shall become finally effective until it has been approved by the Commission. The county or other unit adopting the plan shall transmit it, when adopted, to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the plan, and shall review and consider each county land-use plan in light of such objections and comments, the State guidelines, the requirements of this Article, and any generally applicable standards of review adopted by rule of the Commission. Within 45 days after receipt of a county land-use plan the Commission shall either approve the plan or notify the county of the specific changes which must be made in order for it to be approved. Following such changes, the plan may be resubmitted in the same manner as the original plan.

(g) Copies of each county land-use plan which has been approved, and as it may have been amended from time to time, shall be maintained in a form available for public inspection by (i) the county, (ii) the Commission, and (iii) the lead regional organization of the region which includes the county. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

#### **§ 113A-111. Effect of land-use plan.**

No permit shall be issued under Part 4 of this Article for development which is inconsistent with the approved land-use plan for the county in which it is proposed. No local ordinance or other local regulation shall be adopted which, within an area of environmental concern, is inconsistent

with the land-use plan of the county or city in which it is effective; any existing local ordinances and regulations within areas of environmental concern shall be reviewed in light of the applicable local land-use plan and modified as may be necessary to make them consistent therewith. All local ordinances and other local regulations affecting a county within the coastal area, but not affecting an area of environmental concern, shall be reviewed by the Commission for consistency with the applicable county and city land-use plans and, if the Commission finds any such ordinance or regulation to be inconsistent with the applicable land-use plan, it shall transmit recommendations for modification to the adopting local government. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

**§ 113A-112. Planning grants.**

The Secretary is authorized to make grants to local governmental units for the purpose of assisting in the development of local plans and management programs under this Article. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. The Secretary may condition payment of a grant on the completion of the local plan or management program and may pay the grant in installments based on satisfactory completion of specific elements of the plan or program and on approval of the plan or program by the Commission. Of the funds appropriated to the Department to make grants under this section, the Department may carry forward to the next fiscal year funds in the amount necessary to pay grants awarded or extended in any fiscal year. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1989, c. 727, s. 218(66); 1997-443, s. 11A.119(a); 2001-494, s. 6.)

Part 3. Areas of Environmental Concern.

**§ 113A-113. Areas of environmental concern; in general.**

(a) The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.

(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

- (1) Coastal wetlands as defined in G.S. 113-229(n)(3) and contiguous areas necessary to protect those wetlands;
- (2) Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality;
- (3) Renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could jeopardize future water, food or fiber requirements of more than local concern, which may include:

- a. Watersheds or aquifers that are present sources of public water supply, as identified by the Department or the Environmental Management Commission, or that are classified for water-supply use pursuant to G.S. 143-214.1;
  - b. Capacity use areas that have been declared by the Environmental Management Commission pursuant to G.S. 143-215.13(c) and areas wherein said Environmental Management Commission (pursuant to G.S. 143-215.3(d) or 143-215.3(a)(8)) has determined that a generalized condition of water depletion or water or air pollution exists;
  - c. Prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of marketable timber), as identified by the Department.
- (4) Fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:
- a. Existing national or State parks or forests, wilderness areas, the State Nature and Historic Preserve, or public recreation areas; existing sites that have been acquired for any of the same, as identified by the Secretary; and proposed sites for any of the same, as identified by the Secretary, provided that the proposed site has been formally designated for acquisition by the governmental agency having jurisdiction;
  - b. Present sections of the natural and scenic rivers system;
  - c. Stream segments that have been classified for scientific or research uses by the Environmental Management Commission, or that are proposed to be so classified in a proceeding that is pending before said Environmental Management Commission pursuant to G.S. 143-214.1 at the time of the designation of the area of environmental concern;
  - d. Existing wildlife refuges, preserves or management areas, and proposed sites for the same, as identified by the Wildlife Resources Commission, provided that the proposed site has been formally designated for acquisition (as hereinafter defined) or for inclusion in a cooperative agreement by the governmental agency having jurisdiction;
  - e. Complex natural areas surrounded by modified landscapes that do not drastically alter the landscape, such as virgin forest stands within a commercially managed forest, or bogs in an urban complex;

- f. Areas that sustain remnant species or aberrations in the landscape produced by natural forces, such as rare and endangered botanical or animal species;
  - g. Areas containing unique geological formations, as identified by the State Geologist; and
  - h. Historic places that are listed, or have been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966; historical, archaeological, and other places and properties owned, managed or assisted by the State of North Carolina pursuant to Chapter 121; and properties or areas that are or may be designated by the Secretary of the Interior as registered natural landmarks or as national historic landmarks;
- (5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;
- (6) Natural-hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include:
- a. Sand dunes along the Outer Banks;
  - b. Ocean and estuarine beaches and the shoreline of estuarine and public trust waters;
  - c. Floodways and floodplains;
  - d. Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;
  - e. Areas with a significant potential for air inversions, as identified by the Environmental Management Commission.
- (7) Areas which are or may be impacted by key facilities.
- (8) Outstanding Resource Waters as designated by the Environmental Management Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary for the purpose of maintaining the exceptional water quality and outstanding resource values identified in the designation.
- (9) Primary Nursery Areas as designated by the Marine Fisheries Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary to protect the resource values identified in the designation including, but not limited to, those values contributing to the continued productivity of estuarine and marine fisheries and thereby promoting the public health, safety and welfare.

(c) In those instances where subsection (b) of this section refers to locations identified by a specified agency, said agency is hereby authorized to make the indicated identification from time to time and is directed to transmit the identification to the Commission; provided, however, that no designation of an area of environmental concern based solely on an agency identification of a proposed location may remain effective for longer than three years unless, in the case of paragraphs (4)a and d of subsection (b) of this section, the proposed site has been at least seventy-five percent (75%) acquired. Within the meaning of this section, "formal designation for acquisition" means designation in a formal resolution adopted by the governing body of the agency having jurisdiction (or by its chief executive, if it has no governing body), together with a direction in said resolution that the initial step in the land acquisition process be taken (as by filing an application with the Department of Administration to acquire property pursuant to G.S. 146-23).

(d) Additional grounds for designation of areas of environmental concern are prohibited unless enacted into law by an act of the General Assembly. (1973, c. 476, s. 128; c. 1262, ss. 23, 86; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 518, s. 1; 1989, c. 217, s. 1; c. 727, s. 128; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

**§ 113A-114. Repealed by Session Laws 1983, c. 518, s. 2, effective June 13, 1983.**

**§ 113A-115. Designation of areas of environmental concern.**

(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings required by this section are in addition to the hearing required by Article 2A of Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:

- (1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.
- (2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.
- (3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.

(4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby.

(b) In addition to the notice required by G.S. 113A-115(a)(2) notice shall be given to any interested State agency and to any citizen or group that has filed a request to be notified of a public hearing to be held under this section.

(c) The Commission shall review the designated areas of environmental concern at least biennially. New areas may be designated and designated areas may be deleted, in accordance with the same procedures as apply to the original designations of areas under this section. Areas shall not be deleted unless it is found that the conditions upon which the original designation was based shall have been found to be substantially altered. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1975, 2nd Sess., c. 983, s. 78; 1981, c. 932, s. 2.1; 1987, c. 827, s. 135; 2000-189, s. 11.)

### **§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(3) "Terminal groin" means one or more structures constructed at the terminus of an island or on the side of an inlet, with a main stem generally perpendicular to the beach shoreline, that is primarily intended to protect the terminus of the island from shoreline erosion and inlet migration. A "terminal groin" shall be pre-filled with beach quality sand and allow sand moving in the littoral zone to flow past the structure. A "terminal groin" may include other design features, such as a number of smaller supporting structures, that are consistent with sound engineering practices and as recommended by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes. A "terminal groin" is not a jetty.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This subsection shall not apply to any of the following:

- (1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to July 1, 2003.
- (2) Any permanent erosion control structure that was originally constructed prior to July 1, 1974, and that has since been in continuous use to protect an inlet that is maintained for navigation.
- (3) Any terminal groin permitted pursuant to this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for a permanent erosion control structure originally permitted pursuant to a variance granted by the Commission prior to July 1, 1995, if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(c1) The Commission may authorize the repair or replacement of a temporary erosion control structure that was originally permitted prior to July 1, 1995, if the Commission finds that (i) the structure is located adjacent to an intertidal marine rock outcropping designated by the State as a Natural Heritage Area pursuant to Part 42 of Article 2 of Chapter 143B of the General Statutes and (ii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to this section.

(e) In addition to the requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an applicant for a permit for the construction of a terminal groin shall submit all of the following to the Commission:

- (1) Information to demonstrate that structures or infrastructure are threatened by erosion.
- (2) An environmental impact statement that satisfies the requirements of G.S. 113A-4. An environmental impact statement prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq., for the construction of the terminal groin shall satisfy the requirements of this subdivision.
- (3) A list of property owners and local governments that may be affected by the construction of the proposed terminal groin and its accompanying beach fill project and proof that the property owners and local governments have been notified of the application for construction of the terminal groin and its accompanying beach fill project.

- (4) A plan for the construction and maintenance of the terminal groin and its accompanying beach fill project prepared by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes.
  - (5) A plan for the management of the inlet and the estuarine and ocean shorelines immediately adjacent to and under the influence of the inlet. The inlet management plan monitoring and mitigation requirements must be reasonable and not impose requirements whose costs outweigh the benefits. The inlet management plan is not required to address sea level rise. The inlet management plan shall do all of the following relative to the terminal groin and its accompanying beach fill project:
    - a. Describe the post-construction activities that the applicant will undertake to monitor the impacts on coastal resources.
    - b. Define the baseline for assessing any adverse impacts and the thresholds for when the adverse impacts must be mitigated.
    - c. Provide for mitigation measures to be implemented if adverse impacts reach the thresholds defined in the plan.
    - d. Provide for modification or removal of the terminal groin if the adverse impacts cannot be mitigated.
  - (6) Proof of financial assurance verified by the Commission or the Secretary of Environmental Quality in the form of a bond, insurance policy, escrow account, guaranty, local government taxing or assessment authority, a property owner association's approved assessment, or other financial instrument or combination of financial instruments that is adequate to cover the cost of implementing all of the following components of the inlet management plan:
    - a. Long-term maintenance and monitoring of the terminal groin.
    - b. Implementation of mitigation measures.
    - c. Modification or removal of the terminal groin.
    - d. Repealed by Session Laws 2013-384, s. 3(a), effective August 23, 2013, and applicable to permit applications submitted on or after that date.
- (f) The Commission shall issue a permit for the construction of a terminal groin if the Commission finds no grounds for denying the permit under G.S. 113A-120 and the Commission finds all of the following:
- (1) The applicant has complied with all of the requirements of subsection (e) of this section.
  - (2) Repealed by Session Laws 2013-384, s. 3(a), effective August 23, 2013, and applicable to permit applications submitted on or after that date.
  - (3) The terminal groin will be accompanied by a concurrent beach fill project to prefill the groin.
  - (4) Construction and maintenance of the terminal groin will not result in significant adverse impacts to private property or to the public recreational beach. In making this finding, the Commission shall take into

account the potential benefits of the project, including protection of the terminus of the island from shoreline erosion and inlet migration, beaches, protective dunes, wildlife habitats, roads, homes, and infrastructure, and mitigation measures, including the accompanying beach fill project, that will be incorporated into the project design and construction and the inlet management plan.

- (5) The inlet management plan is adequate for purposes of monitoring the impacts of the proposed terminal groin and mitigating any adverse impacts identified as a result of the monitoring.
- (6) Except to the extent expressly modified by this section, the project complies with State guidelines for coastal development adopted by the Commission pursuant to G.S. 113A-107.

(g) The Commission may issue no more than six permits for the construction of a terminal groin pursuant to this section, provided that two of the six permits may be issued only for the construction of terminal groins on the sides of New River Inlet in Onslow County and Bogue Inlet between Carteret and Onslow Counties.

(h) A local government may not use funds generated from any of the following financing mechanisms for any activity related to the terminal groin or its accompanying beach fill project:

- (1) Special obligation bonds issued pursuant to Chapter 159I of the General Statutes.
- (2) Nonvoted general obligation bonds issued pursuant to G.S. 159-48(b)(4).
- (3) Financing contracts entered into under G.S. 160A-20 or G.S. 159-148.

(i) No later than January 1, 2019, and every five years thereafter, the Coastal Resources Commission shall report to the Environmental Review Commission on the implementation of this section. The report shall provide a detailed description of each proposed and permitted terminal groin and its accompanying beach fill project, including the information required to be submitted pursuant to subsection (e) of this section. For each permitted terminal groin and its accompanying beach fill project, the report shall also provide all of the following:

- (1) The findings of the Commission required pursuant to subsection (f) of this section.
- (2) The status of construction and maintenance of the terminal groin and its accompanying beach fill project, including the status of the implementation of the plan for construction and maintenance and the inlet management plan.
- (3) A description and assessment of the benefits of the terminal groin and its accompanying beach fill project, if any.
- (4) A description and assessment of the adverse impacts of the terminal groin and its accompanying beach fill project, if any, including a description and assessment of any mitigation measures implemented to address adverse impacts. (2003-427, s. 3; 2004-195, s. 1.2; 2004-203, s. 43;

2011-387, s. 1; 2012-201, s. 2(a); 2013-384, s. 3(a); 2015-241, ss. 14.6(r), 14.30(v); 2017-10, s. 4.19; 2018-114, s. 15.)

#### Part 4. Permit Letting and Enforcement.

##### **§ 113A-116. Local government letter of intent.**

Within two years after July 1, 1974, each county and city within the coastal area shall submit to the Commission a written statement of its intent to act, or not to act, as a permit-letting agency under G.S. 113A-121. If any city or county states its intent not to act as a permit-letting agency or fails to submit a statement of intent within the required period, the Secretary shall issue permits therein under G.S. 113A-121; provided that a county may submit a letter of intent to issue permits in any city within said county that disclaims its intent to issue permits or fails to submit a letter of intent. Provided, however, should any city or county fail to become a permit-letting agency for any reason, but shall later express its desire to do so, it shall be permitted by the Coastal Resources Commission to qualify as such an agency by following the procedure herein set forth for qualification in the first instance. (1973, c. 1284, s. 1; 1975, c. 452, s. 2; 1977, c. 771, s. 4; 1989, c. 727, s. 129.)

##### **§ 113A-117. Implementation and enforcement programs.**

(a) The Secretary shall develop and present to the Commission for consideration and to all cities and counties and lead regional organizations within the coastal area for comment a set of criteria for local implementation and enforcement programs. In the preparation of such criteria, the Secretary shall emphasize the necessity for the expeditious processing of permit applications. Said criteria may contain recommendations and guidelines as to the procedures to be followed in developing local implementation and enforcement programs, the scope and coverage of said programs, minimum standards to be prescribed in said programs, staffing of permit-letting agencies, permit-letting procedures, and priorities of regional or statewide concern. Within 20 months after July 1, 1974, the Commission shall adopt and transmit said criteria (with any revisions) to each coastal-area county and city that has filed an applicable letter of intent, for its guidance.

(b) The governing body of each city in the coastal area that filed an affirmative letter of intent shall adopt an implementation and enforcement plan with respect to its zoning area within 36 months after July 1, 1974. The board of commissioners of each coastal-area county that filed an affirmative letter of intent shall adopt an implementation plan with respect to portions of the county outside city zoning areas within 36 months after July 1, 1974, provided, however, that a county implementation and enforcement plan may also cover city jurisdictions for those cities within the counties that have not filed affirmative letters of intent pursuant to G.S. 113A-116. Prior to adopting the implementation and enforcement program the local governing body shall hold a public hearing at which public and private parties shall have the opportunity to present comments and views. Notice of the hearing shall be given not less than 15 days before the date of the hearing, and shall state the date, time and place of the hearing, the subject of the hearing, and the action which is to be taken. The notice shall state that copies of the proposed implementation and enforcement program are available for public inspection at the county courthouse. Any such notice shall be published at least once in one newspaper of general circulation in the county at least 15 days before the date on which the public hearing is scheduled to begin.

(c) Each coastal-area county and city shall transmit its implementation and enforcement program when adopted to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the program, and shall review and consider each local implementation and enforcement program submitted in light of such objections and comments, the Commission's criteria and any general standards of review applicable throughout the coastal area as may be adopted by the Commission. Within 45 days after receipt of a local implementation and enforcement program the Commission shall either approve the program or notify the county or city of the specific changes that must be made in order for it to be approved. Following such changes, the program may be resubmitted in the same manner as the original program.

(d) If the Commission determines that any local government is failing to administer or enforce an approved implementation and enforcement program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 90 days of receipt of notification from the Commission, the Commission shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program. (1973, c. 1284, s. 1; 1975, c. 452, s. 3; 1977, c. 771, s. 4; 1989, c. 727, s. 130.)

#### **§ 113A-118. Permit required.**

(a) After the date designated by the Secretary pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A-121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary.

(c) Permits shall be obtained from the Commission or its duly authorized agent.

(d) Within the meaning of this Part:

(1) A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Environmental Quality, the Department of Administration, the North Carolina Oil and Gas Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(2) A "minor development" is any development other than a "major development."

(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such

facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.

(f) The Secretary may issue special emergency permits under this Article. These permits may only be issued in those extraordinary situations in which life or structural property is in imminent danger as a result of storms, sudden failure of man-made structures, or similar occurrence. These permits may carry any conditions necessary to protect the public interest, consistent with the emergency situation and the impact of the proposed development. If an application for an emergency permit includes work beyond that necessary to reduce imminent dangers to life or property, the emergency permit shall be limited to that development reasonably necessary to reduce the imminent danger; all further development shall be considered under ordinary permit procedures. This emergency permit authority of the Secretary shall extend to all development in areas of environmental concern, whether major or minor development, and the mandatory notice provisions of G.S. 113A-119(b) shall not apply to these emergency permits. To the extent feasible, these emergency permits shall be coordinated with any emergency permits required under G.S. 113-229(e1). The fees associated with any permit issued pursuant to this subsection or rules adopted pursuant to this subsection shall be waived. (1973, c. 476, s. 128; c. 1282, ss. 23, 33; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1979, c. 253, s. 5; 1981, c. 932, s. 2.1; 1983, c. 173; c. 518, s. 3; 1987, c. 827, s. 136; 1989, c. 727, s. 131; 1997-443, s. 11A.119(a); 2007-485, s. 5; 2012-143, s. 1(d); 2014-4, s. 4(c); 2015-241, s. 14.30(u).)

#### **§ 113A-118.1. General permits.**

(a) The Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider:

- (1) The size of the development;
- (2) The impact of the development on areas of environmental concern;
- (3) How often the class of development is carried out;
- (4) The need for onsite oversight of the development; and
- (5) The need for public review and comment on individual development projects.

(b) General permits may be issued by the Commission. Individual developments carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of G.S. 113A-119.

(c) The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues.

(d) The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.

(e) The Commission shall allow the use of riprap in the construction of groins in estuarine and public trust waters on the same basis as the Commission allows the use of wood. (1983, c. 171; c. 442, s. 1; 1987, c. 827, s. 137; 2002-126, s. 29.2(f).)

#### **§ 113A-118.2. Development in Primary Nursery Areas and Outstanding Resource Waters areas of environmental concern.**

Public notice, opportunity for public comment, and agency review shall be required for all development within the Primary Nursery Areas or Outstanding Resource Waters areas of environmental concern. Provided, however, that the Coastal Resources Commission may by rule exempt or issue general permits for minor maintenance and improvement projects as defined in G.S. 113A-103(5)c. and for single-family residential development pursuant to use standards or conditions adopted by the Coastal Resources Commission. (1989, c. 217, s. 2.)

### **§ 113A-119. Permit applications generally.**

(a) Any person required to obtain a permit under this Part shall file with the Secretary and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission. The applicant must submit with the application a check or money order payable to the Department or the city or county, as the case may be, constituting a fee set by the Commission pursuant to G.S. 113A-119.1.

(b) Upon receipt of any application, a significant modification to an application for a major permit, or an application to modify substantially a previously issued major permit, the Secretary shall issue public notice of the proposed development (i) by mailing a copy of the application or modification, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency; (ii) with the exception of minor permit applications, by posting or causing to be posted a notice at the location of the proposed development stating that an application, a modification of an application for a major permit, or an application to modify a previously issued major permit for development has been made, where the application or modification may be inspected, and the time period for comments; and (iii) with the exception of minor permit applications, by publishing notice of the application or modification at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least 20 days before final action on a major permit or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after mailing of the mailed notice, whichever is later.

(c) Within the meaning of this Part, the "designated local official" is the official who has been designated by the local governing body to receive and consider permit applications under this Part. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 307; 1985, c. 372; 1989, c. 53; c. 727, s. 132; 1989 (Reg. Sess., 1990), c. 987, s. 1; 2013-413, s. 30; 2017-209, s. 5(b).)

### **§ 113A-119.1. Permit fees.**

(a) The Commission shall have the power to establish a graduated fee schedule for the processing of applications for permits, renewals of permits, modifications of permits, or transfers of permits issued pursuant to this Article. In determining the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the

applications, related compliance activities, and the complexity of the development sought to be undertaken for which a permit is required under this Article. The fee to be charged for processing an application may not exceed four hundred dollars (\$400.00). The total funds collected from fees authorized by the Commission pursuant to this section in any fiscal year shall not exceed thirty-three and one-third percent (33 1/3%) of the total personnel and administrative costs incurred by the Department for permit processing and compliance programs within the Division of Coastal Area Management.

(b) Fees collected under this section shall be applied to the costs of administering this Article.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1039, s. 4. (1989 (Reg. Sess., 1990), c. 987, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 4.)

### **§ 113A-119.2. Review of offshore fossil fuel facilities.**

(a) In addition to the definitions set out in G.S. 113A-103, as used in this section, the following definitions shall apply:

- (1) "Coastal fishing waters" has the same meaning as in G.S. 113-129.
- (2) "Discharge" has the same meaning as in G.S. 143-215.77.
- (3) "Offshore fossil fuel facility" means those facilities for the exploration, development, or production of oil or natural gas which, because of their size, magnitude, or scope of impacts, have the potential to affect any land or water use or natural resource of the coastal area. For purposes of this definition, offshore fossil fuel facilities shall include, but are not limited to:
  - a. Structures, including drill ships and floating platforms and structures relocated from other states or countries, located in coastal fishing waters.
  - b. Any equipment associated with a structure described in sub-subdivision a. of this subdivision, including, but not limited to, pipelines and vessels that are used to carry, transport, or transfer oil, natural gas, liquid natural gas, liquid propane gas, or synthetic gas.
  - c. Onshore support or staging facilities associated with a structure described in sub-subdivision a. of this subdivision.
- (4) "Oil" has the same meaning as in G.S. 143-215.77.

(b) In addition to any other information necessary to determine consistency with State guidelines adopted pursuant to G.S. 113A-107, the following information is required for the review of an offshore fossil fuel facility located in coastal fishing waters:

- (1) All information required to be included in an Exploration Plan required pursuant to Subpart B of Part 250 of 30 C.F.R. (July 1, 2009 edition).
- (2) All information required to be included in an Oil-Spill Response Plan required pursuant to Subpart B of Part 254 of 30 C.F.R. (July 1, 2009 edition).

- (3) An assessment of alternatives to the proposed offshore fossil fuel facility that would minimize the likelihood of an unauthorized discharge.
- (4) An assessment of the potential for an unauthorized discharge to cause temporary or permanent violations of the federal and State water quality standards, including the antidegradation policy adopted pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).
- (5) Any other information that the Commission determines necessary for consistency review. (2010-179, s. 2.)

**§ 113A-120. Grant or denial of permits.**

- (a) The responsible official or body shall deny an application for a permit upon finding:
  - (1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
  - (2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
  - (3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).
  - (4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).
  - (5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
  - (6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.
  - (7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.
  - (8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.
  - (9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.
  - (10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.

(b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and state laws, regulations, and rules for the protection of the environment.

(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) Repealed by Session Laws 1989, c. 676, s. 7. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1; 1983, c. 518, ss. 4, 5; 1987, c. 827, s. 138; 1989, c. 51; c. 676, s. 7; 1997-337, s. 2; 1997-456, s. 55.2B; 1997-496, s. 2; 2000-172, s. 2.1.)

### **§ 113A-120.1. Variances.**

(a) Any person may petition the Commission for a variance granting permission to use the person's land in a manner otherwise prohibited by rules or standards prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of the rules, standards, or orders.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the rules, standards, or orders; will secure public safety and welfare; and will preserve substantial justice.

(b) The Commission may impose reasonable and appropriate conditions and safeguards upon any variance it grants. (1989, c. 676, s. 8; 2002-68, s. 1.)

### **§ 113A-120.2. Expired.**

**§ 113A-121. Permits for minor developments under expedited procedures.**

(a) Applications for permits for minor developments shall be expeditiously processed so as to enable their promptest feasible disposition.

(b) In cities and counties that have developed approved implementation and enforcement programs, applications for permits for minor developments shall be considered and determined by the designated local official of the city or county as the case may be. In cities and counties that have not developed approved implementation and enforcement programs, such applications shall be considered and determined by the Secretary. Minor development projects proposed to be undertaken by a local government within its own permit-letting jurisdiction shall be considered and determined by the Secretary.

(c) Failure of the Secretary or the designated local official (as the case may be) to approve or deny an application for a minor permit within 25 days from receipt of application shall be treated as approval of the application, except that the Secretary or the designated local official (as the case may be) may extend the deadline by not more than an additional 25 days in exceptional cases. No waiver of the foregoing time limitation (or of the time limitation established in G.S. 113A-122(c)) shall be required of any applicant.

(d) Repealed by Session Laws 1981, c. 913, s. 2. (1973, c. 1284, s. 1; 1977, c. 771, s. 4; 1981, c. 913, s. 2; 1983, c. 172, s. 1; c. 399; 1989, c.727, s. 133.)

**§ 113A-121.1. Administrative review of permit decisions.**

(a) An applicant for a minor or major development permit who is dissatisfied with the decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. When a local official makes a decision to grant or deny a minor development permit and the Secretary is dissatisfied with the decision, the Secretary may file a petition for a contested case within 20 days after the decision is made.

(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

- (1) Has alleged that the decision is contrary to a statute or rule;
- (2) Is directly affected by the decision; and
- (3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General

Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case.

(c) When the applicant seeks administrative review of a decision concerning a permit under subsection (a) of this section, the permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission makes a final decision in the contested case, and no action may be taken during that time that would be unlawful in the absence of a permit.

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. 150B-33 or by a reviewing court as set forth in G.S. 150B-48. (1981, c. 913, s. 3; 1983, c. 400, ss. 1, 2; 1987, c. 827, s. 139; 1995, c. 409, s. 1; 2011-398, s. 37; 2014-120, s. 23.)

**§ 113A-122. Procedures for hearings on permit decisions.**

(a) Repealed by Session Laws 1987, c. 827, s. 140.

(b) The following provisions shall be applicable in connection with hearings pursuant to this section:

(1), (2) Repealed by Session Laws 1987, c. 827, s. 140.

(3) A full and complete record of all proceedings at any hearing under this section shall be taken by a reporter appointed by the Commission or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Commission.

(4) to (6) Repealed by Session Laws 1987, c. 827, s. 140.

(7) The burden of proof at any hearing on a decision granting a permit shall be upon the person who requested the hearing.

(8), (9) Repealed by Session Laws 1987, c. 827, s. 140.

(10) The Commission shall grant or deny the permit in accordance with the provisions of G.S. 113A-120. All such orders and decisions of the Commission shall set forth separately the Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Commission is based.

(11) The Commission shall have the authority to adopt a seal which shall be the seal of said Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, rule of procedure or any other official act or records of the Commission or its minutes may be certified by the Executive Director under his hand and the seal of the Commission and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action to proceedings. The Commission shall have the right to take official notice of all studies, reports, statistical data or any other official reports or records of the

federal government or of any sister state and all such records, reports and data may be placed in evidence by the Commission or by any other person or interested party where material, relevant and competent.

(c) Failure of the Commission to approve or deny an application for a permit pursuant to this section within 75 days from receipt of application shall be treated as approval of the application, except the Commission may extend the deadline by not more than an additional 75 days in exceptional cases.

Failure of the Commission to dispose of an appeal pursuant to this section within 90 days from notice of appeal shall be treated as approval of the action appealed from, except that the Commission may extend the deadline by not more than an additional 90 days if necessary to properly consider the appeal.

(d) All notices which are required to be given by the Secretary or Commission or by any party to a proceeding under this section shall be given by registered or certified mail to all persons entitled thereto. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Commission may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Commission may prescribe the form and content of any particular notice. (1973, c. 1284, s. 1; 1979, c. 253, s. 6; 1981, c. 913, ss. 4-6; 1983, c. 172, s. 2; 1987, c. 827, s. 140.)

#### **§ 113A-123. Judicial review.**

(a) Any person directly affected by any final decision or order of the Commission under this Part may appeal such decision or order to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of Chapter 150B of the General Statutes. Pending final disposition of any appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this Part.

(b) Any person having a recorded interest or interest by operation of law in or registered claim to land within an area of environmental concern affected by any final decision or order of the Commission under this Part may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, or an interest, therein, and in case he is adjudged the owner of the subject land, or an interest therein, the court shall determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof, being not otherwise authorized by law, and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of taking without compensation. The burden of proof shall be on petitioner as to ownership and the burden of proof shall be on the Commission to prove that the order is not an unreasonable exercise of the police power, as aforesaid. Either party shall be entitled to a jury trial on all issues of fact, and the court shall enter a judgment in accordance with the issues, as to whether the Commission order shall apply to the land of the petitioner. The Secretary shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this subsection for the determination of the issue of whether such order constitutes a taking without compensation shall be exclusive and such issue shall not be determined in any other proceeding. Any action authorized by this subsection shall be calendared for trial at the next civil session of superior court after the summons and complaint have been served for 30 days, regardless of whether issues were joined more than 10 days before the session. It is the duty of the presiding judge to expedite the trial of these actions and to give them a preemptory setting over all others,

civil or criminal. From any decision of the superior court either party may appeal to the court of appeals as a matter of right.

(c) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Commission and upon finding that sufficient funds are available therefor, and with the consent of the Governor and Council of State may take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this Article. (1973, c. 1284, s. 1; c. 1331, s. 3; 1977, c. 771, s. 4; 1987, c. 827, s. 1; 1989, c.727, s. 134.)

### **§ 113A-124. Additional powers and duties.**

(a) The Secretary shall have the following additional powers and duties under this Article:

- (1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.
- (2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.
- (3) To keep a list of interested persons who wish to be notified of proposed developments and proposed rules designating areas of environmental concern and to so notify these persons of such proposed developments by regular mail. A reasonable registration fee to defray the cost of handling and mailing notices may be charged to any person who so registers with the Commission.
- (4) To propose rules to implement this Article for consideration by the Commission.
- (5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental rules.
- (6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the Secretaries of Administration and of Environmental Quality may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel rules and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any

local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141.
- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.
- (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a).)

#### **§ 113A-125. Transitional provisions.**

(a) Existing regulatory permits shall continue to be administered within the coastal area by the agencies presently responsible for their administration until a date (not later than 44 months after July 1, 1974), to be designated by the Secretary of Natural and Economic Resources as the permit changeover date. Said designation shall be effective from and after its filing with the Secretary of State.

(b) From and after the "permit changeover date," all existing regulatory permits within the coastal area shall be administered in coordination and consultation with (but not subject to the veto of) the Commission. No such existing permit within the coastal area shall be issued, modified, renewed or terminated except after consultation with the Commission. The provisions of this subsection concerning consultation and coordination shall not be interpreted to authorize or require

the extension of any deadline established by this Article or any other law for completion of any permit, licensing, certification or other regulatory proceedings.

(c) Within the meaning of this section, "existing regulatory permits" include dredge and fill permits issued pursuant to G.S. 113-229; sand dune permits issued pursuant to G.S. 104B-4; air pollution control and water pollution control permits, special orders or certificates issued pursuant to G.S. 143-215.1 and 143-215.2, or any other permits, licenses, authorizations, approvals or certificates issued by the Board of Water and Air Resources pursuant to Chapter 143; capacity use area permits issued pursuant to G.S. 143-215.15; final approval of dams pursuant to G.S. 143-215.30; floodway permits issued pursuant to G.S. 143-215.54; water diversion authorizations issued pursuant to G.S. 143-354(c); oil refinery permits issued pursuant to G.S. 143-215.99; mining operating permits issued pursuant to G.S. 74-51; permissions for construction of wells issued pursuant to G.S. 87-88; and rules concerning pesticide application within the coastal area issued pursuant to G.S. 143-458; approvals by the Department of Health and Human Services of plans for water supply, drainage or sewerage, pursuant to G.S. 130-161.1 and 130-161.2; standards and approvals for solid waste disposal sites and facilities, adopted by the Department of Health and Human Services pursuant to Chapter 130, Article 13B; permits relating to sanitation of shellfish, crustacea or scallops issued pursuant to Chapter 130, Articles 14A or 14B; permits, approvals, authorizations and rules issued by the Department of Health and Human Services pursuant to Articles 23 or 24 of Chapter 130 with reference to mosquito control programs or districts; any permits, licenses, authorizations, rules, approvals or certificates issued by the Department of Health and Human Services relating to septic tanks or water wells; oil or gas well rules and orders issued for the protection of environmental values or resources pursuant to G.S. 113-391; a certificate of public convenience and necessity issued by the State Utilities Commission pursuant to Chapter 62 for any public utility plant or system, other than a carrier of persons or property; permits, licenses, leases, options, authorization or approvals relating to the use of State forestlands, State parks or other state-owned land issued by the State Department of Administration, the State Department of Natural and Economic Resources or any other State department, agency or institution; any approvals of erosion and sedimentation control plans that may be issued by the North Carolina Sedimentation Control Commission pursuant to G.S. 113A-60 or 113A-61; and any permits, licenses, authorizations, rules, approvals or certificates issued by any State agency pursuant to any environmental protection legislation not specified in this subsection that may be enacted prior to the permit changeover date.

(d) The Commission shall conduct continuing studies addressed to developing a better coordinated and more unified system of environmental and land-use permits in the coastal area, and shall report its recommendations thereon from time to time to the General Assembly. (1973, c. 1284, s. 1; 1975, c. 452, ss. 4, 5; 1979, c. 299; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 142; 1997-443, s. 11A.122; 2002-165, s. 2.16.)

### **§ 113A-126. Injunctive relief and penalties.**

(a) Upon violation of any of the provisions of this Article or of any rule or order adopted under the authority of this Article the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the State upon the relation of the Secretary for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with

this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(b) Upon violation of any of the provisions of this Article relating to permits for minor developments issued by a local government, or of any rule or order adopted under the authority of this Article relating to such permits, the designated local official may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the affected local government upon the relation of the designated local official for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(c) Any person who shall be adjudged to have knowingly or willfully violated any provision of this Article, or any rule or order adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates, any such provision, rule or order after written notice from the Secretary or (in the case of a permit for a minor development issued by a local government) written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

(d) (1) A civil penalty of not more than one thousand dollars (\$1,000) for a minor development violation and ten thousand dollars (\$10,000) for a major development violation may be assessed by the Commission against any person who:

- a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
- b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
- c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
- d. Violates a rule of the Commission implementing this Article.

- (2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.
- (3) The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final decision was served on the violator.
- (4) In determining the amount of the civil penalty, the Commission shall consider the following factors:
  - a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
  - b. The duration and gravity of the violation;
  - c. The effect on water quality, coastal resources, or public trust uses;
  - d. The cost of rectifying the damage;
  - e. The amount of money saved by noncompliance;
  - f. Whether the violation was committed willfully or intentionally;
  - g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and
  - h. The cost to the State of the enforcement procedures.
- (4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars (\$1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less.
- (5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 485, ss. 1-3; c. 518, s. 6; 1987, c. 827, ss.

11, 143; 1991, c. 725, s. 6; 1991 (Reg. Sess., 1992), c. 839, s. 3; c. 890, s. 8; 1993, c. 539, s. 874; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 53(a); 2006-229, s. 1; 2011-398, s. 38.)

**§ 113A-127. Coordination with the federal government.**

All State agencies shall keep informed of federal and interstate agency plans, activities, and procedures within their area of expertise that affect the coastal area. Where federal or interstate agency plans, activities or procedures conflict with State policies, all reasonable steps shall be taken by the State to preserve the integrity of its policies. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

**§ 113A-128. Protection of landowners' rights.**

Nothing in this Article authorizes any governmental agency to adopt a rule or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States. (1973, c. 1284, s. 1; 1987, c. 827, s. 144.)

**§ 113A-129: Reserved for future codification purposes.**

Part 5. Coastal Reserves.

**§ 113A-129.1. Legislative Findings and Purposes.**

(a) Findings. – It is hereby determined and declared as a matter of legislative finding that the coastal area of North Carolina contains a number of important undeveloped natural areas. These areas are vital to continued fishery and wildlife protection, water quality maintenance and improvement, preservation of unique and important coastal natural areas, aesthetic enjoyment, and public trust rights such as hunting, fishing, navigation, and recreation. Such land and water areas are necessary for the preservation of estuarine areas of the State, constitute important research facilities, and provide public access to waters of the State.

(b) Purposes. – Important public purposes will be served by the preservation of certain of these areas in an undeveloped state. Such areas would thereafter be available for research, education, and other consistent public uses. These areas would also continue to contribute perpetually to the natural productivity and biological, economic, and aesthetic values of North Carolina's coastal area. (1989, c. 344, s. 1.)

**§ 113A-129.2. Coastal Reserve Program.**

(a) There is hereby created a North Carolina Coastal Reserve System for the purpose of acquiring, improving, and maintaining undeveloped coastal land and water areas in a natural state.

(b) This system shall be established and administered by the Department of Environmental Quality. In so doing the Department shall consult with and seek the ongoing advice of the Coastal Resources Commission. The Department may by rule define the areas to be included in this system and set standards for its use.

(c) This system shall be established within the coastal area as defined by G.S. 113A-103(2).

(d) All acquisitions or dispositions of property for lands within this system shall be in accordance with the provisions of Chapter 146 of the General Statutes.

(e) All lands and waters within the system shall be used primarily for research and education. Other public uses, such as hunting, fishing, navigation, and recreation, shall be allowed to the extent consistent with these primary uses. Improvements and alterations to the lands shall be limited to those consistent with these uses. (1989, c. 344, s. 1; c. 727, s. 218(58); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

### **§ 113A-129.3. Coordination.**

(a) To the extent feasible, this system shall be carried out in coordination with the National Estuarine Reserve Research System established by 16 U.S.C. § 1461.

(b) To the extent feasible, lands and waters within this system shall be dedicated as components of the "State Nature and Historic Preserve" as provided in Article XIV, Section 5, of the Constitution and as nature reserves pursuant to G.S. 113A-164.1 to G.S. 113A-164.11. (1989, c. 344, s. 1, c. 770, s. 47.)

### **§§ 113A-130 through 113A-134. Reserved for future codification purposes.**

#### Part 6. Public Beach and Coastal Waterfront Access Program.

### **§ 113A-134.1. Legislative findings.**

(a) The General Assembly finds that there are many privately owned lots or tracts of land in close proximity to the Atlantic Ocean and the coastal waters in North Carolina that have been and will be adversely affected by hazards such as erosion, flooding, and storm damage. The sand dunes on many of these lots provide valuable protective functions for public and private property and serve as an integral part of the beach sand supply system. Placement of permanent substantial structures on these lots will lead to increased risks of loss of life and property, increased public costs, and potential eventual encroachment of structures onto the beach.

(b) The public has traditionally fully enjoyed the State's beaches and coastal waters and public access to and use of the beaches and coastal waters. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the economic well-being of the State. The General Assembly finds that the beaches and coastal waters are resources of statewide significance and have been customarily freely used and enjoyed by people throughout the State. Public access to beaches and coastal waters in North Carolina is, however, becoming severely limited in some areas. Also, the lack of public parking is increasingly making the use of existing public access difficult or impractical in some areas. The public interest would best be served by providing increased access to beaches and coastal waters and by making available additional public parking facilities. There is therefore, a pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement, and maintenance of public accessways to the beaches and coastal waters. (1981, c. 925, s. 1; 1983, c. 751, s. 13; 1989, c. 344; s. 2; 1995, c. 183, s. 2.)

**§ 113A-134.2. Creation of program; administration; purpose; definitions.**

(a) There is created the Public Beach and Coastal Waterfront Access Program, to be administered by the Commission and the Department, for the purpose of acquiring, improving, and maintaining property along the Atlantic Ocean and coastal waterways to which the public has rights-of-access or public trust rights as provided in this Part.

(b) As used in this Part:

- (1) "Public trust resources" has the same meaning as in G.S. 113-131(e).
- (2) "Public trust rights" has the same meaning as in G.S. 1-45.1. (1981, c. 925, s. 1; 1983, c. 757, s. 13; 1989, c. 344, s. 2; c. 727, s. 136; c. 751, s. 13; 1995, c. 183, s. 3.)

**§ 113A-134.3. Standards for public access program.**

(a) The Commission, with the support of the Department, shall establish and carry out a program to assure the acquisition, improvement, and maintenance of a system of public access to coastal beaches and public trust waters. This public access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of the property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands that due to adverse effects of natural hazards, such as past and potential erosion, flooding, and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all coastal beaches and public trust waters where access is compatible with the natural resources involved and where reasonable access is not available.

(b) To the maximum extent possible, this program shall be coordinated with State and local beach and coastal water management and recreational programs and shall be carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department may allow property, without charge, to be controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose.

(c) Subject to any restrictions imposed by law, any funds appropriated or otherwise made available to the Public Beach and Coastal Waterfront Access Program may be used to meet matching requirements for federal or other funds. The Department shall make every effort to obtain funds from sources other than the General Fund to implement this program. Funds may be used to acquire or develop land for pedestrian access including parking and to make grants to local governments to accomplish the purposes of this Part. All acquisitions or dispositions of property made pursuant to this Part shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Part for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach or coastal waters access. (1981, c. 925, s. 1; 1983, c. 334; c. 757, s. 13; 1987, c. 827, s. 145; 1989, c. 344, s. 2; c. 727, s. 137; c. 751, s. 13; 1995, c. 183, s. 4.)

**§§ 113A-134.4 through 113A-134.9. Reserved for future codification purposes.**